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**Hostess Brands Corporation and Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local 334.** Case 01–CA–080461

December 3, 2012

**DECISION AND ORDER**

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN  
AND BLOCK

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and an amended charge filed on May 7 and July 26, 2012, respectively, by Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local 334 (the Union), the Acting General Counsel issued the complaint on August 31, 2012, against Hostess Brands Corporation (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On October 30, 2012, the Acting General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On November 1, 2012, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on the Motion for Default Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by September 14, 2012, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the Acting General Counsel's motion disclosed by letter dated September 28, 2012, that the Region notified the Respondent that if no answer was received by October 5, 2012, a motion for default judgment would be filed. The Respondent failed to file an answer.

Accordingly, in the absence of good cause being shown for the failure to file an answer, we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent has been a corporation with an office and place of business located in Biddeford, Maine (the Maine facility), and has been engaged in the manufacture and nonretail sale of baked goods.

In conducting its operations annually, the Respondent sells and ships from its Maine facility goods valued in excess of \$50,000 directly to points outside the State of Maine.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, Joe Cabral held the position of the Respondent's human resources manager and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees in "Union Recognition," Article 1, Section 1 of the collective-bargaining agreement between the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local 334 and Hostess Brands Corporation.

Since at least May 4, 2002, and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which expired on about May 5, 2012.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about February 20, 2012, the Union has requested in writing that the Respondent furnish the Union with the following information:

(a) "... when or if the company will pursue termination on each [employee currently on workers' compensation]."

(b) "list of all employees terminated or being terminated, under [the Employer's] new policy, how long each has been out on workers' compensation . . ." and "[a] list of all workers who are currently out

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on workers' compensation and have not been terminated, how long each of these employees has been out of work . . . ."

The information requested by the Union, as described above, is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about February 20, 2012, the Respondent has failed and refused to furnish the Union with the information described above in paragraph (a).

From about February 20 to July 18, 2012, the Respondent unreasonably delayed in furnishing the Union with the information described above in paragraph (b).

## CONCLUSION OF LAW

By failing to furnish the Union with certain requested information and by unreasonably delaying providing the Union with other requested information, the Respondent has failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with certain information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees, and by unreasonably delaying in providing the Union with other such requested information, we shall order the Respondent to furnish the Union with the information it requested on February 20, 2012, that has not already been provided.

## ORDER

The National Labor Relations Board orders that the Respondent, Hostess Brands Corporation, Biddeford, Maine, its officers, agents, successors, and assigns, shall

## 1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local 334 as the exclusive collective-bargaining representative of the unit employees by failing and refusing to furnish the Union with certain requested information and by unreasonably delaying in furnishing the Union with other requested information that is necessary for and relevant to

the Union's performance of its duties as the exclusive collective-bargaining representative of the employees in the following bargaining unit:

All employees in "Union Recognition," Article 1, Section 1 of the collective-bargaining agreement between the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local 334 and Hostess Brands Corporation.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union the information it requested on February 20, 2012, that has not already been provided.

(b) Within 14 days after service by the Region, post at its facility in Biddeford, Maine, copies of the attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 20, 2012.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## HOSTESS BRANDS CORP.

Dated, Washington, D.C. December 3, 2012

<u>Mark Gaston Pearce,</u>	<u>Chairman</u>
<u>Richard F. Griffin, Jr.,</u>	<u>Member</u>
<u>Sharon Block,</u>	<u>Member</u>

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## APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local 334 as the exclusive collective-bargaining representative of our unit employees by failing and refusing to furnish the Union with certain requested information and unreasonably delaying in providing the Union with other requested information that is necessary for and relevant to the performance of its duties as the exclusive collective-bargaining representative of the employees in the following bargaining unit:

All employees in "Union Recognition," Article 1, Section 1 of the collective-bargaining agreement between the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local 334 and Hostess Brands Corporation.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish the Union with the information it requested on February 20, 2012, that has not already been provided.

HOSTESS BRANDS CORPORATION